

**STATE BOARD OF EQUALIZATION**  
**BEFORE THE ADMINISTRATIVE JUDGE**

IN RE: TGM Signature Pointe, Inc )  
Map149-00-0, Parcels 300.00 & 307.00 ) Davidson County  
Commercial Property )  
Tax Year 2006 )

## INITIAL DECISION AND ORDER

## Statement of the Case

The subject property is presently valued as follows:

<u>Parcel 300.00</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$2,271,500	\$14,931,400	\$17,202,900	\$6,881,160

<b><u>Parcel 307.00</u></b>			
<b><u>LAND VALUE</u></b>	<b><u>IMPROVEMENT VALUE</u></b>	<b><u>TOTAL VALUE</u></b>	<b><u>ASSESSMENT</u></b>
\$280,500	\$0	\$280,500	\$70,125

Appeals have been filed on behalf of the property owner with the State Board of Equalization on September 1, 2006.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on April 19, 2007, at the Davidson County Property Assessor's Office. Present at the hearing were Attorney Bob Pernai, the taxpayer's representative and Mr. Dennis Donovan, MAI, Division of Assessments for the Metro. Property Assessor.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of two commercial tracts commonly known as Autumn Woods Apartments located at 100 Hickory Highlands Drive in Nashville, Tennessee.

The taxpayer's representative contends that this 460 unit apartment complex is worth \$13,000,000 based on his analysis of the data using the income approach. Mr. Pernai produced a multi-paged exhibit that included not only the income analysis, but the year end 2005 income and expense report as well as the year end rent rolls. Mr. Pernai relied solely on the income approach to value when arriving at his conclusions. His rationale was investors, when looking at how much to pay or not pay for income producing property, will be looking at the proverbial bottom line, how much income does this property produce on a yearly basis?

The assessor contends that the property should be valued at \$19,780,000, which is more than the current assessment but the county did not seek an increase. In support of



this position, Mr. Donovan used the sales comparison approach as well as the income capitalization approach when reaching his conclusions.

The germane issue is the fair market value of the property as of January 1, 2006. The basis of valuation as stated in T.C.A. § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of **market value for ad valorem tax purposes** is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22. (emphasis supplied) Biveks Corp., et al., entered February 8<sup>th</sup>, 2006, (Madison Co., Tax Year 2005)

After reviewing all the evidence in this case, the administrative judge finds that the subject property should be valued as assessed by the Metropolitan Board of Equalization. Since the taxpayer is appealing the determination, the burden of proof in this matter falls on the taxpayer. *Big Fork Mining Company v. Tennessee Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981) and Rule 0600-1-.11(1) State Board of Equalization.

As was discussed in other decisions by Mark Minsky, the senior administrative judge for the State Board of Equalization, " . . . the threshold issue is this appeal concerns the minimum evidence the appealing party must introduce to establish a *prima facie* case". Biveks Corp., et al., (Madison Co., Tax Year 2005).

In looking at the current case a careful analysis shows several similarities, a further analysis and evaluation of the evidence presentation by Mr. Pernai shows that he too used the leased fee valuations when coming to his conclusions, whereas the Assessment Appeals Commission has ruled in *First American National Bank Building Partnership* (Davidson County, Tax Years 1984-1987) that it "is the entire fee simple unencumbered value and not any lessor or partial interest" which is normally subject to taxation. Final



Decision and Order at 3.<sup>1</sup> While there is some dissimilarity, the conclusion is the same; the taxpayers' representative has failed to meet his burden in this cause.

Even though Mr. Pernai used actual rent rolls in his analysis as was discussed in Biveks, Corp., there needs to be a showing that these amounts are within marketable ranges.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

**Parcel 300.00**

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$2,271,500	\$14,931,400	\$17,202,900	\$6,881,160

**Parcel 307.00**

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$280,500	\$0	\$280,500	\$70,125

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

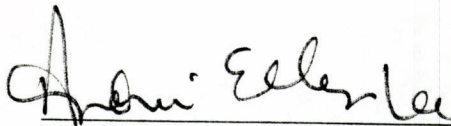
---

<sup>1</sup> Rather than to continue to quote various portions of the opinion, a copy will be attached for reference.



This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 15<sup>th</sup> day of May, 2007.

A handwritten signature in black ink, appearing to read "Andrei Ellen Lee", is written over a horizontal line.

ANDREI ELLEN LEE  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Bob Pernai, Esq.  
Jo Ann North, Property Assessor



BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	<i>Biveks Corp., et al.</i>	)	
	<i>a/k/a Best Western</i>	)	
	<i>Carriage House Inn &amp; Suites</i>	)	
	<i>5-55J-C-55K-8.02</i>	)	
	<i>OR Investments, Inc.</i>	)	
	<i>c/o Hospitality Concepts, Inc.</i>	)	
	<i>d/b/a Country Inn &amp; Suites</i>	)	
	<i>5-55-55-16.03</i>	)	
	<i>Chetan P. Patel, et ux</i>	)	Madison County
	<i>c/o Camelot Inn</i>	)	
	<i>d/b/a Knights Inn</i>	)	
	<i>3-44M-A-55D-23</i>	)	
	<i>Krishna Hospitality, LLC</i>	)	
	<i>a/k/a Howard Johnson</i>	)	
	<i>6-42-42-61.10</i>	)	
	<i>Shree Hari II, LLC</i>	)	
	<i>a/k/a Arlington Inns, Inc.</i>	)	
	<i>d/b/a Amerihost Inn</i>	)	
	<i>5-55-55-16.11</i>	)	
	<i>Tax Year 2005</i>	)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as set forth in exhibit 1.

Appeals have been filed on behalf of the property owners with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on January 17, 2006 in Jackson, Tennessee. The various taxpayers were represented by registered agents Larry Berretta and David Young. The assessor of property was represented by staff appraiser Sherri Marbury.

The administrative judge has consolidated these appeals for disposition because of the common issues and representation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject properties consist of five hotels/motels located in Jackson, Tennessee.

The taxpayers contended that subject properties should be valued as summarized in exhibit 2. In support of this position, the taxpayers' representatives introduced income approaches for each property. The various income approaches experiences essentially utilized the average historical operating histories of the properties in arriving at a stabilized estimate of net operating income.

The assessor contended that subject properties should remain valued at their current appraised values. In support of this position, an income approach was introduced for each property. The indicated values from the income approaches are summarized in exhibit 2.



Ms. Marbury stated that although the income approaches support somewhat higher values, the assessor simply seeks affirmation of the current appraisals.

Despite placing primary emphasis on the income approach, Ms. Marbury's exhibits also included cost approaches as summarized by the property record cards and copies of building permits. In addition, Ms. Marbury noted the June 30, 1998 and June 16, 2005 sales of the Amerihost Inn (Shree Hari II, LLC/5-55-55-16.11) for \$2,500,000 and \$2,175,000 respectively.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

After having reviewed all the evidence in the case, the administrative judge finds that the subject properties should be valued as contended by the assessor of property based upon the presumptions of correctness attaching to the decisions of the Madison County Board of Equalization.

Since the taxpayers are appealing from the determinations of the Madison County Board of Equalization, the burden of proof in this matter falls on the taxpayers. *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the threshold issue in this appeal concerns the minimum evidence the appealing party must introduce to establish a prima facie case. As will be discussed below, the administrative judge finds that the taxpayers' proof in these



appeals was insufficient to establish prima facie cases. Indeed, the taxpayers' methodology was strikingly similar to that utilized by another representative in a series of Washington County appeals wherein the administrative judge found the assessor was entitled to directed verdicts. See, e.g., *Scharfstein Investments* (Washington Co., Tax Year 2004).

The administrative judge finds that the taxpayers' proof must initially be rejected because the cost and sales comparison approaches were not even addressed. The administrative judge recognizes that in certain instances one or more approaches to value must be considered inapplicable. Similarly, the administrative judge understands that there are situations when the income approach properly receives greatest weight when reconciling the various indications of value. However, the administrative judge finds that all three approaches must at least be considered in order to arrive at a reliable conclusion of value.

As stated in one authoritative text:

All three approaches are applicable to many appraisal problems, but one or more of the approaches may have greater significance in a given assignment. . . .

Appraisers should apply all the approaches that are applicable and for which there is data. The alternative value indications derived can either support or refute one another.

Appraisal Institute, *The Appraisal of Real Estate* at 62 (12<sup>th</sup> ed. 2001).

The administrative judge finds that even if the income approach was properly the only approach to consider in each instance, the taxpayers' income approaches cannot be adopted as the basis of valuation for two fundamental reasons. First, as will be discussed in greater detail below, the income approaches were incomplete. Second, the income approaches actually constituted leased fee valuations whereas the Assessment Appeals Commission ruled in *First American National Bank Building Partnership* (Davidson Co., Tax Years 1984-1987) that it "is the entire fee simple unencumbered value and not any lesser or partial interests" which is normally subject to taxation. Final Decision and Order at 3.

The administrative judge finds that in each case the taxpayers' representatives arrived at their estimates of net operating income by averaging that particular property's historical gross incomes, vacancy rates and operating expenses. No local market data or industry data was introduced to establish that the historical incomes or expenses were representative of market norms.

The administrative judge finds that the procedure typically followed in the income approach has been summarized in one authoritative text as follows:

Assessing the earning power of a property means reaching a conclusion regarding its net operating income expectancy. The



appraiser estimates income and expenses after researching and analyzing the following:

- The income and expense history of the subject property
- Income and expense histories of competitive properties
- Recently signed leases, proposed leases, and asking rents for the subject and *competitive properties*
- Actual vacancy levels for the subject and *competitive properties*
- Management expenses for the subject and *competitive properties*
- Published operating expense data and operating expenses at the subject and *competitive properties*

\* \* \*

[Emphasis supplied]

Appraisal Institute, *The Appraisal of Real Estate* at 509 (12<sup>th</sup> ed., 2001). Respectfully, the administrative judge finds that the taxpayers' income approaches lack probative value because they ignored the market.

The administrative judge finds that the taxpayers' income approaches must also be rejected because of insufficient evidence concerning whether the various properties actual operating histories are indicative of what a potential buyer would assume in projecting *future* net operating income. The Appraisal Institute addresses this concept in relevant part as follows:

To apply any capitalization procedure, a reliable estimate of income expectancy must be developed. Although some capitalization procedures are based on the actual level of income at the time of the appraisal, all must eventually consider a projection of future income. An appraiser must consider the future outlook both in the estimate of income and expenses and in the selection of the appropriate capitalization methodology to use. Failure to consider future income would contradict the principle of anticipation, which holds that value is the present worth of future benefits.

Historical income and current income are significant, but the ultimate concern is the future. The earning history of a property is important only insofar as it is accepted by buyers as an indication of the future. Current income is a good starting point, but the direction and expected pattern of income change are critical to the capitalization process.

*Id.* At 497.



The administrative judge finds that by simply averaging historical income and expenses the representatives' methodology does not even necessarily result in a realistic stabilized estimate based upon historical income and expenses. For example, the taxpayer's exhibit in the *Krishna Hospitality, LLC* appeal (Howard Johnson/6-42-42-61.10) reflects the following treatment of income and expenses:

	<u>Actual 2004</u>	<u>Actual 2003</u>	<u>Actual 2002</u>	<u>Stabilized 3 Year Average</u>
Income	\$320,308	\$301,635	\$269,865	\$297,269
Expenses				
Maintenance And Repair	\$6,185	\$120,116	\$2,817	\$43,039
Total	\$200,977	\$337,800	\$196,918	\$245,232

The administrative judge finds that the gross income generated by subject property has increased each year. The administrative judge finds that a prospective buyer of subject property would presumably assume increasing, or at least stable, income in projecting a realistic future income stream. The administrative judge finds no evidence whatsoever was introduced to indicate that revenues would likely decline in the future.

With respect to expenses, the administrative judge finds that the 2003 expenditures shown for the maintenance and repair category almost certainly reflect one or more capital expenditures. The administrative judge finds that the 2003 expenses are excessive and should not simply be averaged. Ironically, the administrative judge assumes market data would establish that the 2002 and 2004 expenditures for maintenance and repair were below market norms.

Based upon the foregoing, the administrative judge finds that the taxpayers' failed to establish prima facie cases for any of the properties under appeal. Accordingly, the administrative judge finds it unnecessary to even address the assessor's proof since she seeks no changes in value.

#### ORDER

It is therefore ORDERED that the values and assessments set forth in exhibit 1 are hereby adopted for tax year 2005.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:



**STATE BOARD OF EQUALIZATION**  
**BEFORE THE ADMINISTRATIVE JUDGE**

IN RE:	TGM Signature Pointe, Inc	)	
	Map149-00-0, Parcels 300.00 & 307.00	)	Davidson County
	Commercial Property	)	
	Tax Year 2006	)	

## INITIAL DECISION AND ORDER

## Statement of the Case

The subject property is presently valued as follows:

<u>Parcel 300.00</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$2,271,500	\$14,931,400	\$17,202,900	\$6,881,160

<u>Parcel 307.00</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$280,500	\$0	\$280,500	\$70,125

Appeals have been filed on behalf of the property owner with the State Board of Equalization on September 1, 2006.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on April 19, 2007, at the Davidson County Property Assessor's Office. Present at the hearing were Attorney Bob Pernai, the taxpayer's representative and Mr. Dennis Donovan, MAI, Division of Assessments for the Metro. Property Assessor.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of two commercial tracts commonly known as Autumn Woods Apartments located at 100 Hickory Highlands Drive in Nashville, Tennessee.

The taxpayer's representative contends that this 460 unit apartment complex is worth \$13,000,000 based on his analysis of the data using the income approach. Mr. Pernai produced a multi-paged exhibit that included not only the income analysis, but the year end 2005 income and expense report as well as the year end rent rolls. Mr. Pernai relied solely on the income approach to value when arriving at his conclusions. His rationale was investors, when looking at how much to pay or not pay for income producing property, will be looking at the proverbial bottom line, how much income does this property produce on a yearly basis?

The assessor contends that the property should be valued at \$19,780,000, which is more than the current assessment but the county did not seek an increase. In support of



this position, Mr. Donovan used the sales comparison approach as well as the income capitalization approach when reaching his conclusions.

The germane issue is the fair market value of the property as of January 1, 2006. The basis of valuation as stated in T.C.A. § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of **market value for ad valorem tax purposes** is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22. (emphasis supplied) Biveks Corp., et al., entered February 8<sup>th</sup>, 2006, (Madison Co., Tax Year 2005)

After reviewing all the evidence in this case, the administrative judge finds that the subject property should be valued as assessed by the Metropolitan Board of Equalization. Since the taxpayer is appealing the determination, the burden of proof in this matter falls on the taxpayer. *Big Fork Mining Company v. Tennessee Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981) and Rule 0600-1-.11(1) State Board of Equalization.

As was discussed in other decisions by Mark Minsky, the senior administrative judge for the State Board of Equalization, " . . . the threshold issue is this appeal concerns the minimum evidence the appealing party must introduce to establish a *prima facie* case". Biveks Corp., et al., (Madison Co., Tax Year 2005).

In looking at the current case a careful analysis shows several similarities, a further analysis and evaluation of the evidence presentation by Mr. Pernai shows that he too used the leased fee valuations when coming to his conclusions, whereas the Assessment Appeals Commission has ruled in *First American National Bank Building Partnership* (Davidson County, Tax Years 1984-1987) that it "is the entire fee simple unencumbered value and not any lessor or partial interest" which is normally subject to taxation. Final



Decision and Order at 3.<sup>1</sup> While there is some dissimilarity, the conclusion is the same; the taxpayers' representative has failed to meet his burden in this cause.

Even though Mr. Pernai used actual rent rolls in his analysis as was discussed in Biveks, Corp., there needs to be a showing that these amounts are within marketable ranges.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>Parcel 300.00</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$2,271,500	\$14,931,400	\$17,202,900	\$6,881,160
<u>Parcel 307.00</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$280,500	\$0	\$280,500	\$70,125

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

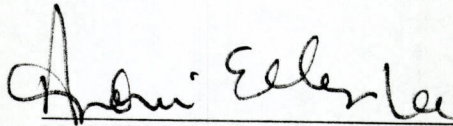
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

<sup>1</sup> Rather than to continue to quote various portions of the opinion, a copy will be attached for reference.



This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 15<sup>th</sup> day of May, 2007.

A handwritten signature in black ink, appearing to read "Andrei Ellen Lee", written over a horizontal line.

ANDREI ELLEN LEE  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Bob Pernal, Esq.  
Jo Ann North, Property Assessor



BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	<i>Biveks Corp., et al.</i>	)	
	<i>a/k/a Best Western</i>	)	
	<i>Carriage House Inn &amp; Suites</i>	)	
	<i>5-55J-C-55K-8.02</i>	)	
	<i>OR Investments, Inc.</i>	)	
	<i>c/o Hospitality Concepts, Inc.</i>	)	
	<i>d/b/a Country Inn &amp; Suites</i>	)	
	<i>5-55-55-16.03</i>	)	
	<i>Chetan P. Patel, et ux</i>	)	Madison County
	<i>c/o Camelot Inn</i>	)	
	<i>d/b/a Knights Inn</i>	)	
	<i>3-44M-A-55D-23</i>	)	
	<i>Krishna Hospitality, LLC</i>	)	
	<i>a/k/a Howard Johnson</i>	)	
	<i>6-42-42-61.10</i>	)	
	<i>Shree Hari II, LLC</i>	)	
	<i>a/k/a Arlington Inns, Inc.</i>	)	
	<i>d/b/a Amerihost Inn</i>	)	
	<i>5-55-55-16.11</i>	)	
	<i>Tax Year 2005</i>	)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as set forth in exhibit 1.

Appeals have been filed on behalf of the property owners with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on January 17, 2006 in Jackson, Tennessee. The various taxpayers were represented by registered agents Larry Berretta and David Young. The assessor of property was represented by staff appraiser Sherri Marbury.

The administrative judge has consolidated these appeals for disposition because of the common issues and representation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject properties consist of five hotels/motels located in Jackson, Tennessee.

The taxpayers contended that subject properties should be valued as summarized in exhibit 2. In support of this position, the taxpayers' representatives introduced income approaches for each property. The various income approaches experiences essentially utilized the average historical operating histories of the properties in arriving at a stabilized estimate of net operating income.

The assessor contended that subject properties should remain valued at their current appraised values. In support of this position, an income approach was introduced for each property. The indicated values from the income approaches are summarized in exhibit 2.



Ms. Marbury stated that although the income approaches support somewhat higher values, the assessor simply seeks affirmation of the current appraisals.

Despite placing primary emphasis on the income approach, Ms. Marbury's exhibits also included cost approaches as summarized by the property record cards and copies of building permits. In addition, Ms. Marbury noted the June 30, 1998 and June 16, 2005 sales of the Amerihost Inn (Shree Hari II, LLC/5-55-55-16.11) for \$2,500,000 and \$2,175,000 respectively.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

After having reviewed all the evidence in the case, the administrative judge finds that the subject properties should be valued as contended by the assessor of property based upon the presumptions of correctness attaching to the decisions of the Madison County Board of Equalization.

Since the taxpayers are appealing from the determinations of the Madison County Board of Equalization, the burden of proof in this matter falls on the taxpayers. *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the threshold issue in this appeal concerns the minimum evidence the appealing party must introduce to establish a prima facie case. As will be discussed below, the administrative judge finds that the taxpayers' proof in these



appeals was insufficient to establish prima facie cases. Indeed, the taxpayers' methodology was strikingly similar to that utilized by another representative in a series of Washington County appeals wherein the administrative judge found the assessor was entitled to directed verdicts. See, e.g., *Scharfstein Investments* (Washington Co., Tax Year 2004).

The administrative judge finds that the taxpayers' proof must initially be rejected because the cost and sales comparison approaches were not even addressed. The administrative judge recognizes that in certain instances one or more approaches to value must be considered inapplicable. Similarly, the administrative judge understands that there are situations when the income approach properly receives greatest weight when reconciling the various indications of value. However, the administrative judge finds that all three approaches must at least be considered in order to arrive at a reliable conclusion of value.

As stated in one authoritative text:

All three approaches are applicable to many appraisal problems, but one or more of the approaches may have greater significance in a given assignment. . . .

Appraisers should apply all the approaches that are applicable and for which there is data. The alternative value indications derived can either support or refute one another.

Appraisal Institute, *The Appraisal of Real Estate* at 62 (12<sup>th</sup> ed. 2001).

The administrative judge finds that even if the income approach was properly the only approach to consider in each instance, the taxpayers' income approaches cannot be adopted as the basis of valuation for two fundamental reasons. First, as will be discussed in greater detail below, the income approaches were incomplete. Second, the income approaches actually constituted leased fee valuations whereas the Assessment Appeals Commission ruled in *First American National Bank Building Partnership* (Davidson Co., Tax Years 1984-1987) that it "is the entire fee simple unencumbered value and not any lesser or partial interests" which is normally subject to taxation. Final Decision and Order at 3.

The administrative judge finds that in each case the taxpayers' representatives arrived at their estimates of net operating income by averaging that particular property's historical gross incomes, vacancy rates and operating expenses. No local market data or industry data was introduced to establish that the historical incomes or expenses were representative of market norms.

The administrative judge finds that the procedure typically followed in the income approach has been summarized in one authoritative text as follows:

Assessing the earning power of a property means reaching a conclusion regarding its net operating income expectancy. The



appraiser estimates income and expenses after researching and analyzing the following:

- The income and expense history of the subject property
- Income and expense histories of competitive properties
- Recently signed leases, proposed leases, and asking rents for the subject and *competitive properties*
- Actual vacancy levels for the subject and *competitive properties*
- Management expenses for the subject and *competitive properties*
- Published operating expense data and operating expenses at the subject and *competitive properties*

\* \* \*

[Emphasis supplied]

Appraisal Institute, *The Appraisal of Real Estate* at 509 (12<sup>th</sup> ed., 2001). Respectfully, the administrative judge finds that the taxpayers' income approaches lack probative value because they ignored the market.

The administrative judge finds that the taxpayers' income approaches must also be rejected because of insufficient evidence concerning whether the various properties actual operating histories are indicative of what a potential buyer would assume in projecting *future* net operating income. The Appraisal Institute addresses this concept in relevant part as follows:

To apply any capitalization procedure, a reliable estimate of income expectancy must be developed. Although some capitalization procedures are based on the actual level of income at the time of the appraisal, all must eventually consider a projection of future income. An appraiser must consider the future outlook both in the estimate of income and expenses and in the selection of the appropriate capitalization methodology to use. Failure to consider future income would contradict the principle of anticipation, which holds that value is the present worth of future benefits.

Historical income and current income are significant, but the ultimate concern is the future. The earning history of a property is important only insofar as it is accepted by buyers as an indication of the future. Current income is a good starting point, but the direction and expected pattern of income change are critical to the capitalization process.

*Id.* At 497.



The administrative judge finds that by simply averaging historical income and expenses the representatives' methodology does not even necessarily result in a realistic stabilized estimate based upon historical income and expenses. For example, the taxpayer's exhibit in the *Krishna Hospitality, LLC* appeal (Howard Johnson/6-42-42-61.10) reflects the following treatment of income and expenses:

	Actual <u>2004</u>	Actual <u>2003</u>	Actual <u>2002</u>	Stabilized <u>3 Year Average</u>
Income	\$320,308	\$301,635	\$269,865	\$297,269
Expenses				
Maintenance And Repair	\$6,185	\$120,116	\$2,817	\$43,039
Total	\$200,977	\$337,800	\$196,918	\$245,232

The administrative judge finds that the gross income generated by subject property has increased each year. The administrative judge finds that a prospective buyer of subject property would presumably assume increasing, or at least stable, income in projecting a realistic future income stream. The administrative judge finds no evidence whatsoever was introduced to indicate that revenues would likely decline in the future.

With respect to expenses, the administrative judge finds that the 2003 expenditures shown for the maintenance and repair category almost certainly reflect one or more capital expenditures. The administrative judge finds that the 2003 expenses are excessive and should not simply be averaged. Ironically, the administrative judge assumes market data would establish that the 2002 and 2004 expenditures for maintenance and repair were below market norms.

Based upon the foregoing, the administrative judge finds that the taxpayers' failed to establish prima facie cases for any of the properties under appeal. Accordingly, the administrative judge finds it unnecessary to even address the assessor's proof since she seeks no changes in value.

#### ORDER

It is therefore ORDERED that the values and assessments set forth in exhibit 1 are hereby adopted for tax year 2005.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies: